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Office Action Summary

Application No. 09/901,870	Applicant(s) Harold P. Olmo
Examiner Anne Marie Grunberg	Art Unit 1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Mar 7, 2003
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.
- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on Mar 7, 2003 is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

- 15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

1. Claim 1 remains rejected under 35 U.S.C. 112, first and second paragraphs, for the reason stated below.

Applicant's amendment dated 03/07/03 failed to address at least the following:

A. Although Applicant has provided new acceptable drawings, they are referred to in the specification as "Fig. 1", "Fig. 2", and "Fig. 3" although they are not labeled as such. With Applicant's permission, the Examiner would be willing to either label the figures appropriately or to change the specification to delete reference to "Fig." and substitute language such as --The first sheet--, etc.

B. A new oath/declaration is required as explained in the first Office action.

C. Although Applicant implies that asexual propagation occurred in McFarland, Ca., it is not explicitly stated. The location of asexual propagation must be set forth.

D. Although some of the color designations have been set forth, the following have not yet been addressed: The adaxial and abaxial leaf colors, cane coloration of old growth, cane coloration of new growth, lateral branch color, tendrils, flower bud, flower color, color of each of the sex organs such as anthers, stamen, stigma, style, and pollen, berry flesh color, peduncle color, immature leaf color, and bark striations.

E. Although some more description has been set forth in the specification, the following items have not yet been addressed: leaf length and width, tendril length, a description of the length of the flower bud, flowers and flower organs including shape and number of various organs and flower scent. Although Applicant has set forth that the flowers are perfect, no other information concerning the size of the petals, etc has been set forth. Additionally, the pedicel length, petiole length, length of berry with and without treatment, and the approximate internode length has not been adequately set forth. Since cold storage period is a distinguishing characteristic of the instant variety, this needs to be quantitatively set forth in the specification.

F. Applicant is again strongly urged to change the name of the plant to one that is not numerical in nature.

G. The abstract must not compare the invention to the prior art. A new abstract is required.

Conclusion

The claim is not allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Future Correspondence

Any inquiry concerning this communication from the Examiner should be directed to Anne Marie Grünberg whose telephone number is (703) 305-0805. The Examiner can normally

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be reached Monday through Thursday from 6:00 am to 3:30 pm and alternate Fridays from 7:00 am to 3:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (703) 308-4205. The fax phone number for the group is (703) 305-3014 or 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Anne Marie Grunberg
ANNE MARIE GRUNBERG
PATENT EXAMINER